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February 1, 2012

TO BE FILED UNDER SEAL

VIA FACSIMILE (718) 613-2446

The Honorable I. Leo Glasser
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Doe, 98 CR 1101 (ILG)

Dear Judge Glasser:

On behalf of defendant John Doe, we respectfully submit this letter in response to non-party Richard Roe's facsimile letter of last evening ("Roe Fax"), threatening, among other things, to disseminate Your Honor's Scheduling Order, dated January 26, 2012 (the "Order"), and request the following relief. We have conferred with Assistant U.S. Attorney Todd Kaminsky, who does not oppose these requests.

First, Roe states that, "there is nothing in the [Order] that indicates that it is under seal. There is nothing that says my client is gagged from stating what is in it." Roe Fax at 2. Although it would be apparent to any casual observer that the Order is intended to be sealed, given the nature of these proceedings over the last nearly 2 years, Roe is threatening to turn it over to the *New York Times*, which is considering writing an article on this matter. (There is no doubt that Roe has actively solicited the story, as he has done in the past with other news media.)

Given Roe's past history and express threats to disseminate the Order, and in an excess of caution, we would respectfully ask Your Honor to order it sealed and recirculate it.

Second, Roe is now on notice that the government has withdrawn its March 17, 2011 motion to unseal certain docket entries that do not directly reference the defendant's cooperation. However, he is under the mistaken assumption that the withdrawal took place last week, "in response to the New

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York Times' inquiry." Roe Fax at 2. As the Court is aware, this is incorrect. After several adjournments sine die, the government ultimately withdrew its motion on August 24, 2011. The Court is fully aware of the reasons for the withdrawal, and we hesitate to even state the reasons, given Roe's tactics throughout this litigation.

Accordingly, we would respectfully ask the Court either to alert Roe that the government withdrew its March 17, 2011 motion on August 24, 2011, without stating the reasons, or to authorize either counsel for the parties to do so.

Third, Roe claims he is legally entitled to "invite whomever he wishes to attend the hearing [regarding Roe's right to possess and disseminate the non-PSR documents] on March 9th." Roe Fax at 2. We obviously disagree, since opening the hearing to the public would defeat the purpose of these nearly two years of litigation over Roe's right to publicize sealed and confidential (not to mention, stolen) documents about a criminal case.

We would respectfully ask Your Honor to clearly indicate, either in a revised order or otherwise, that the proceedings on March 9th will be closed to the public.

Finally, we would like to inform the Court of a misrepresentation in Roe's Fax, regarding statements we supposedly made about the government's unsealing motion. Roe refers to "Doe's representation (actually a threat) that your honor [sic] would never decide the motion to unseal." We never made such a statement. The statement he is referring to, and is deliberately mischaracterizing, was in an email, dated May 18, 2011. In that email, my partner, Nader Mobarigha, simply stated to Roe and his counsel, "If you believe you are driving the unsealing issue, you are mistaken."

Given the nature of this letter, and the matter as a whole, we respectfully request that this letter be placed under seal. Additionally, we are copying the government on this letter but not non-party Roe, in light of the contents of this letter and Roe's continued threats to disseminate sealed and confidential documents.

By copy of this letter, we are alerting Judge Cogan, who was appointed by the U.S. Court of Appeals to enforce its orders, of Roe's threats to disseminate documents that are the subject of those orders. We are also copying Judge Engelmayer in the Southern District of New York, who has been reassigned Kriss v. Bayrock, 10 Civ. 3959 (PAE) from Judge Buchwald. Roe has made repeated applications for adjournments in that action, based on the government's March

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17, 2011 unsealing application which, unbeknownst to Roe until recently, has been withdrawn.

Respectfully Submitted,



Michael P. Beys
Counsel for Defendant John Doe

cc: Hon. Brian M. Cogan, U.S. District Judge, E.D.N.Y.

Hon. Paul A. Engelmayer, U.S. District Judge, S.D.N.Y.

Todd Kaminsky, Assistant U.S. Attorney